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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:  
Elizabeth Vazquez,

Case No: 2:16-bk-10699-NB

Chapter: 13

Debtor(s).

**OPINION (A) GRANTING RELIEF FROM  
THE AUTOMATIC STAY AND (B) MAKING  
THAT RELIEF EFFECTIVE  
NOTWITHSTANDING ANY FUTURE  
BANKRUPTCY CASES**

Hearing Date:

Date: September 19, 2017

Time: 10:00 a.m.

Place: Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

This case involves an an increasingly common fraud on creditors known as “hijacking.” That is a scheme of issuing a grant deed purporting to transfer an interest in property from a borrower to a debtor in bankruptcy, so as to implicate the automatic stay of Section 362(a)<sup>1</sup> and thereby stop a foreclosure of the borrower’s property.

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<sup>1</sup> Unless the context suggests otherwise, references to a “Chapter” or “Section” (“§”) refer to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), a “Rule” means one of the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, or other federal or local rule, and other terms have the meanings provided in the Bankruptcy Code,

1 Typically the debtor in a hijacked case has been chosen at random, and is not  
2 aware of the scheme. Sometimes even the borrowers themselves are not aware of the  
3 scheme: the borrowers retain someone (an “Agent”) who claims to be able to stop the  
4 foreclosure by some legitimate means, such as negotiations with the mortgage holder,  
5 but then that Agent forges the borrowers’ signatures on a grant deed to a random  
6 debtor and transmits the deed to the foreclosing mortgage holder with a demand to halt  
7 the foreclosure sale.

8 Most mortgage holders in such situations call off or reschedule the foreclosure  
9 sale because, if the debtor actually does have an interest in the property and the  
10 automatic stay applies, penalties for violating the stay can be substantial. See, e.g.,  
11 Section 362(a)(3) & (k). Some Agents even persuade the borrowers to make monthly  
12 payments to them, instead of the foreclosing mortgage holder.

13 The borrower in this case alleges that a scenario substantially like the one  
14 outlined above is what happened to him. He asserts that he is entirely innocent of any  
15 participation in this scheme. For this reason, he argues, this court should not grant  
16 relief from the automatic stay to proceed with foreclosure, even though he is hopelessly  
17 behind in his mortgage payments.

18 The borrower also asserts that this Bankruptcy Court lacks jurisdiction over the  
19 subject property because the debtor has expressly disclaimed any interest in the  
20 property. Therefore, he argues, this court cannot grant relief from the automatic stay  
21 that will continue to be effective notwithstanding any future bankruptcy cases involving  
22 the property (sometimes called “*in rem*” or “*ex parte*” relief). If the borrower is correct  
23 then all Bankruptcy Courts would be powerless to prevent repeated hijacking, with or  
24 without borrowers’ participation.

25 This opinion concludes that (1) this Bankruptcy Court has jurisdiction to grant the  
26 relief requested by the foreclosing creditor; (2) presuming for purposes of this  
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28 the Rules, and the parties’ filed papers. For brevity, documents are referred to by docket  
number rather than their full title (e.g., “dkt. \_\_\_”).

1 discussion that the borrower was duped by his own “foreclosure prevention” Agent,  
2 nevertheless as between the borrower and the creditor, it is the borrower who must bear  
3 the consequences of his own Agent’s acts; and (3) it is appropriate on the facts  
4 presented to terminate the automatic stay in this case and make that relief continue to  
5 be effective notwithstanding any future cases, subject to the limitations described below.  
6 In reaching these conclusions, this court interprets the statutory authority to grant any  
7 type of “relief” from the automatic stay – including but not limited to the examples listed  
8 in the statute – as sufficient to grant relief that will be applicable notwithstanding any  
9 future bankruptcy cases.

10 None of the foregoing should be construed as a termination of all of the  
11 borrower’s rights to retain his property. To the contrary, if the borrower can show  
12 changed circumstances or other good cause to be relieved from this court’s order in a  
13 future bankruptcy case then he can obtain the protections of Section 362(a). Essentially  
14 this court’s ruling only shifts the burden to the borrower to establish that the stay should  
15 apply, instead of leaving the door open to ongoing abuse of the bankruptcy system  
16 through hijacking or other schemes.

17 **1. BACKGROUND**

18 In or around August 2005, James and Rosa M. Zarian (“Borrowers”) executed a  
19 note and deed of trust in favor of Washington Mutual Bank, FA (together with all  
20 assignees and/or agents, “Creditor”), in connection with their purchase of real property  
21 located at 2707 Blue Water Drive, Corona Del Mar, California 92825 (the “Property”).  
22 Borrowers fell behind in their mortgage payments.

23 In or around May 2012, Borrowers allegedly sought and retained the services of  
24 Sean Cohen (Borrowers’ Agent) to assist them in working out a loan modification in  
25 connection with the Property. Under that arrangement, Borrowers allegedly began  
26 sending their monthly mortgage payments directly to their Agent’s wife’s bank account.

27 Borrowers assert that since May 2012, they made aggregate payments of  
28 \$67,750.00 to their Agent. It is undisputed that Creditor did not receive any of the

1 \$67,750.00 and that Borrowers' Agent did not undertake any efforts to facilitate a loan  
2 modification.

3 As a result of Borrowers' default, Creditor initiated foreclosure proceedings. But  
4 their Agent successfully slowed down those proceedings, allegedly without Borrowers'  
5 participation.

6 Borrowers' Agent allegedly forged an unauthorized grant deed (the "Grant Deed")  
7 purporting to transfer a 5% ownership interest in the Property to the debtor in this  
8 bankruptcy case, Elizabeth Vazquez ("Debtor"). The Grant Deed is dated January 18,  
9 2016 (*i.e.*, before the commencement of this bankruptcy case, although the Grant Deed  
10 might well be back-dated).

11 In any event, on January 20, 2016, Debtor filed a voluntary petition under chapter  
12 13 of the Bankruptcy Code. On January 21, 2016, Creditor received a facsimile  
13 containing the Grant Deed and a cover sheet notifying Creditor of this case, which  
14 implicated the automatic stay and succeeded in causing Creditor to halt the foreclosure  
15 process.

16 On August 28, 2017, Creditor filed a motion for relief from the automatic stay  
17 (dkt. 48, the "R/S Motion"). In support of the R/S Motion, Creditor presented undisputed  
18 evidence demonstrating multiple transfers of partial interests in the Property without  
19 Creditor's consent or court approval, as well as multiple bankruptcy filings affecting the  
20 Property. Creditor seeks relief that will be effective notwithstanding any future  
21 bankruptcy cases, pursuant to Section 362(d)(1) and (d)(4). One of the Borrowers,  
22 James Zarian ("Borrower"), filed an opposition (dkt. 52) to the R/S Motion.

23 The matter came on for hearing at the above-captioned date and time. This  
24 court made oral findings of fact and conclusions of law on the record, to be  
25 supplemented by this written Opinion

26 On October 12, 2017, this court entered an order (dkt. 60) granting Creditor  
27 immediate relief but staying any foreclosure proceedings until 28 days from the date of  
28 entry of this Opinion on the docket, so that Borrower will have "the opportunity to ...

1 proceed with his anticipated appeal” or any other remedies without facing immediate  
2 foreclosure. An appeal is currently pending (see dkt. 64).

## 3 **2. DISCUSSION**

### 4 **a. This Court Has Jurisdiction**

5 Federal courts have an independent duty to examine their own jurisdiction and  
6 authority. See, e.g., *In re Rosson*, 545 F.3d 764, 769 n. 5 (9th Cir. 2008). Therefore  
7 this court raised the following jurisdictional issue on its own initiative at the hearing.

8 Arguably, in a situation such as this one in which Debtor disclaims any interest in  
9 the Property, this Bankruptcy Court lacks *in rem* jurisdiction over the Property and  
10 therefore this court cannot grant so-called “*in rem*” relief – *i.e.*, relief that follows the  
11 Property into any future bankruptcy case. Borrower’s counsel orally argued that this is  
12 so.

13 Having raised this argument, this court rejects it. First, the argument puts too  
14 much weight on the colloquial description of relief applicable notwithstanding future  
15 bankruptcy cases as “*in rem*” relief. The automatic stay is deemed to be an order of  
16 the Bankruptcy Courts, and Borrower has not cited any authority that the Bankruptcy  
17 Courts cannot decide the scope of their own orders without having *in rem* jurisdiction  
18 over property. See generally *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (“the  
19 automatic stay qualifies as [a] court order”) (citation omitted); *In re Gruntz*, 202 F.3d  
20 1074, 1082 (9th Cir. 2000) (*en banc*) (“The automatic stay is an injunction issuing from  
21 the authority of the bankruptcy court”).

22 Second, it is well established that, once the automatic stay has been implicated,  
23 Bankruptcy Courts have the jurisdiction and authority to grant relief from that stay, even  
24 if the property at issue is no longer part of the bankruptcy estate, such as after  
25 dismissal and closing of a case. See, e.g., *In re Aheong*, 276 B.R. 233 (9th Cir. BAP  
26 2002) (jurisdiction to annul bankruptcy stay even after dismissal of case).

27 Third, assuming for the sake of discussion that it were necessary to have *in rem*  
28 jurisdiction over the Property, this court does have such jurisdiction. As this court

1 pointed out at the hearing, real property is traditionally described as a “bundle of rights”  
2 – not just dirt and improvements – and at least some rights were transferred to the  
3 bankruptcy estate under the exceptionally broad ambit of property that comes into the  
4 bankruptcy estate under Section 541. The bundle of rights includes what can be  
5 described as the right of an owner of property to invoke the automatic stay to protect  
6 that property, and at least that much was transferred. Borrower argues that there was  
7 no transfer of actual title because Debtor has subsequently refused to accept any  
8 transfer of the Property, but that misses the point: the only transfer that mattered was  
9 the issuance of the Grant Deed that was sufficient to implicate the automatic stay. Put  
10 differently, Borrower cannot have it both ways: he transferred (through his Agent)  
11 enough of an interest in the Property to implicate the automatic stay, so he cannot  
12 deny that he transferred enough of an interest for this court to grant relief from the  
13 automatic stay as it affects the Property. See generally, e.g., *Lucas v. South Carolina*  
14 *Coastal Council*, 505 U.S. 1003, 1004 (1992) (using “bundle of rights” terminology);  
15 *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 831 (1987) (same); *In re Ryerson*,  
16 739 F.2d 1423, 1425 (9th Cir. 1984) (bankruptcy estate includes rights such as “chooses  
17 in action and claims against third parties”).

18 Fourth, and finally, Borrower is estopped to assert that his Agent’s transfer was  
19 insufficient to give this court jurisdiction. Having invoked this court’s jurisdiction to  
20 obtain the benefits of the automatic stay (which, as noted above, is deemed to be an  
21 order of this court that this court issued in reliance on the representations in the Grant  
22 Deed), Borrower is estopped to assert that this court lacks jurisdiction to issue further  
23 orders granting relief from that stay. See, e.g., *Hamilton v. State Farm Fire & Cas. Co.*,  
24 270 F.3d 778, 782 (9th Cir. 2001) (“Judicial estoppel is an equitable doctrine that  
25 precludes a party from gaining an advantage by asserting one position, and then later  
26 seeking an advantage by taking a clearly inconsistent position”).

27 For all of the foregoing reasons, this court concludes that it has jurisdiction to  
28 grant relief from the automatic stay as set forth below.

**b. Multiple Grounds Exist For This Court To Grant Relief, Including  
Relief That Continues to be Effective Notwithstanding Future Bankruptcy Cases**

Section 362(d) provides, in relevant part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

\* \* \*

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording. [11 U.S.C.A. § 362(d)(1) & (4) (emphasis added).]

1 It is undisputed that Borrowers are far behind in their mortgage payments. They  
2 have not suggested any way in which they could afford to cure their arrears, even over  
3 a substantial time. Therefore there is ample “cause” to terminate the automatic stay.  
4 The question is whether such relief can and should last only until some future  
5 bankruptcy case is filed.

6 For the reasons set forth below, this court concludes that the statute is broad  
7 enough to encompass relief that continues to be effective notwithstanding any future  
8 bankruptcy cases, both under the specific provisions of Section 362(d)(4) and,  
9 alternatively, under the broader powers of Section 362(d)(1). This court also concludes  
10 that such relief is appropriate in this case, subject to certain limitations including  
11 Borrowers’ ability to seek relief based on changed circumstances or other good cause.

12 **c. Section 362(d)(4) Authorizes Relief That Continues to be Effective**  
13 **Notwithstanding Any Future Bankruptcy Cases**

14 Creditor provided ample evidence that, in the words of Section 362(d)(4), there  
15 have been both “(A) [multiple] transfer[s] of all or part ownership of, or other interest in,  
16 [the] [P]roperty without the consent of the secured creditor or court approval” and,  
17 alternatively, “(B) multiple bankruptcy filings affecting such real property.” That leaves  
18 two other elements of the statute that Creditor must satisfy.

19 **(i) The filing of the petition was part of the scheme**

20 This court must find “that the filing of the petition was part of a scheme to delay,  
21 hinder, or defraud creditors.” Section 362(d)(4) (emphasis added). One way to read  
22 this clause is that the Debtor must have been participating in the scheme when she filed  
23 her bankruptcy petition. Under that reading Section 362(d)(4) would not apply if, as  
24 Debtor asserts, she was not part of any such scheme.

25 True, the fact that the grant deed is dated before the bankruptcy petition could  
26 imply that Debtor was part of the scheme – how else would Borrowers’ Agent know that  
27 Debtor was about to file a bankruptcy petition? – but this court takes judicial notice that  
28 many hijacking cases involve back-dated, forged deeds. Debtor denies that she was



1 part of the scheme, no party in interest argued otherwise, and therefore this court finds  
2 that she was not. So, again, the question is whether Debtor's innocence is inconsistent  
3 with finding that the filing of her bankruptcy petition "was" part of a scheme of the type  
4 described in Section 362(d)(4).

5 As this court interprets Section 362(d)(4), its requirement that "the filing of the  
6 petition was part of a scheme to delay, hinder, or defraud creditors" encompasses  
7 situations in which the filing of the petition has been made part of a scheme – in other  
8 words, "was" is descriptive, not temporal.

9 As this court previously explained:

10 Relief is appropriate under 11 U.S.C. § 364(d)(4) because,  
11 *as of the time when the scheme was implemented*, the  
12 debtor's 'filing of the petition was part of a scheme [by  
13 Transferor] to delay, hinder, or defraud creditors' (11 U.S.C.  
14 § 362(d)(4)). In other words, [this court] interpret[s] the term  
15 "was" as descriptive of the type of scheme (a scheme that  
16 involves the fact that filing the petition created an automatic  
17 stay), rather than as a temporal limitation intended by  
18 Congress to exclude schemes that are implemented post-  
19 petition. *In re Scarborough*, 461 F.3d 406, 411 (3d Cir.  
20 2006) (interpreting the word "is" in 11 U.S.C. § 1322(b)(2) as  
21 descriptive, not temporal); *In re Abdelgadir*, 455 B.R. 896,  
22 902-03 ([9th Cir. BAP] 2011) (same, under 11 U.S.C. §  
23 1123(b)(5)). [*In re 4th Street Investors, Inc.*, 474 B.R. 709,  
24 711-12 (Bankr. C.D. Cal. 2012) (emphasis in original).]

25 Accordingly, this element of Section 362(d)(4) is satisfied. That leaves one more  
26 element.

27 **(ii) Creditor holds a claim secured by an interest in real property that**  
28 **is subject to Section 362(a)**

29 Section 362(d)(4) applies "with respect to a stay of an act against real property  
30 under subsection (a) [of Section 362], by a creditor whose claim is secured by an  
31 interest in such real property." As set forth in the discussion of this court's jurisdiction,  
32 real property is generally conceived of as a bundle of rights, and part of that bundle was  
33 transferred to the estate and implicated the automatic stay of Section 362(a).

1 Accordingly, Creditor qualifies as a creditor “whose claim is secured by an interest in  
2 such real property.”

3 **(iii) Borrowers’ alleged lack of personal involvement in the scheme**  
4 **does not make Section 362(d)(4) inapplicable**

5 Borrower argues that it would be unfair for the court to grant relief from the  
6 automatic stay, especially relief that continues to be effective notwithstanding any  
7 future bankruptcy case, given Borrowers’ asserted innocence. But there is nothing  
8 unfair in declining to make Creditor bear the burden of the harm caused by Borrowers’  
9 Agent.

10 The invocation of the automatic stay (whether expressly authorized by Borrowers  
11 or not) conferred a benefit upon them by preventing the foreclosure of the Property for  
12 many months. Moreover, presuming for the sake of this discussion that Borrowers did  
13 not authorize Agent’s execution of the Grant Deed or its transmission to Creditor,  
14 Borrowers’ acts of retaining their Agent and providing him with Creditor’s name and  
15 other information about their loan was sufficient to cloak Agent with the apparent  
16 authority to act on their behalf. As explained more fully in section 35:13 of *Williston on*  
17 *Contracts*:

18 When a principal has, by a voluntary act, placed an agent in  
19 a situation so that a person of ordinary prudence, conversant  
20 with business usages and the nature of the particular  
21 business, is justified in assuming that the agent has authority  
22 to enter into a particular contract or to perform a particular  
23 act, and the person deals with the agent on that assumption,  
24 the principal is estopped as against the third person from  
denying the agent’s authority. The principal will not be  
permitted to prove that the agent’s authority was, in fact,  
nonexistent or less extensive than that which the principal  
apparently conferred on the agent. [12 *Williston on Contracts*  
§ 35:13 (4th ed.)]

25 The record clearly shows that Creditor reasonably and detrimentally relied on the  
26 Grant Deed by halting the foreclosure sale, and that Creditor has been further harmed  
27 as a result of the delay and expense associated with seeking relief from the automatic  
28 stay. True, Borrowers apparently were defrauded of many thousands of dollars by

1 their Agent, which is unfair; but their remedy is not to impose the consequences on  
2 Creditor, who was an innocent victim of Agent's scheme.

3 Additionally, for two independent reasons this court's ruling does not unduly  
4 prejudice Borrowers. First, the order granting the R/S Motion contains a provision  
5 staying the foreclosure for 28 days from the date of entry of this Opinion. That  
6 provides ample time for the Borrowers to seek a stay from an appellate court or other  
7 relief (if they can present sufficient grounds to do so).

8 Second, this court's order granting the R/S Motion tracks Section 362(d)(4) in  
9 that it does not prevent Borrowers from filing their own bankruptcy case in the future  
10 and moving for relief from this court's order "based upon changed circumstances or for  
11 good cause shown, after notice and a hearing." For example, if Borrowers can show  
12 that they now have greater income that will enable them to repay their secured debt to  
13 Creditor over time, and if they can satisfy the other requirements of the Bankruptcy  
14 Code to restructure their debt and retain their property, then they can do so under  
15 Chapter 13 or 11. Alternatively, even if they cannot retain their Property, they can  
16 benefit from the Bankruptcy Code's broad discharge of debts under Chapter 7, 11 or  
17 13. They have not shown that there is anything unfair in these alternatives, let alone  
18 that any perceived unfairness could overcome the relief to which Creditor is entitled  
19 under Section 362(d)(4).

20 For all of the foregoing reasons, it is appropriate to grant Creditor's request for  
21 relief pursuant to section 362(d)(4). Alternatively, it is appropriate to grant that relief  
22 under the alternative authority described below.

23 **d. Other Provisions of the Bankruptcy Code Authorize Relief From the**  
24 **Automatic Stay That Continues to be Effective Notwithstanding Future**  
25 **Bankruptcy Cases**

26 Section 362(d) authorizes the bankruptcy court to grant "relief" from the  
27 automatic stay "including" but not limited to the types of relief listed therein, "such as" by  
28 terminating, conditioning, or limiting the stay. As stated in Section 102(3), "includes"

1 and ‘including’ are not limiting.” There is no reason why this court should read into the  
2 statute a limitation that would prevent this court’s order granting the R/S Motion from  
3 continuing to be effective notwithstanding future bankruptcy cases.

4 To the contrary, there are several grounds to read the statute to authorize such  
5 relief, either under Section 362(d)(1) alone, or in conjunction with other authority. First,  
6 there is a history of granting such relief.

7 Before paragraph “(4)” was added to Section 362(d), various courts held that  
8 they could grant relief that would continue to apply despite any future bankruptcy cases,  
9 either (i) based on the broad authorization to grant “relief” under Section 362(d)(1), or  
10 (ii) pursuant to the power in Section 105(a) to “issue any order, process, or judgment  
11 that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code],” or  
12 (iii) pursuant to the Bankruptcy Courts’ inherent powers to determine the scope of their  
13 own (automatic) order imposing the stay, or (iv) some combination of the foregoing.  
14 See, e.g., *In re Golden State Capital Corp.*, 317 B.R. 144, 149 (Bankr. E.D. Cal. 2004);  
15 *In re Amey*, 314 B.R. 864, 869 (Bankr. N.D. Ga. 2004); *In re Price*, 304 B.R. 768 (Bankr.  
16 N.D. Ohio 2004).

17 When paragraph “(4)” was added, nothing in its text or legislative history  
18 purported to limit such authority under Section 362(d)(1), or under Section 105(a), or the  
19 inherent powers of the Bankruptcy Courts to interpret their own orders, which Congress  
20 conferred by the very act of establishing the Bankruptcy Courts. “Congress is  
21 presumed to be aware of an administrative or judicial interpretation of a statute and to  
22 adopt that interpretation when it re-enacts a statute without change.” *Forest Grove*  
23 *School Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (citation omitted); see also *In re*  
24 *Henderson*, 395 B.R. 893, 901 n. 15 (Bankr. S.C. 2008) (quoting *In re McCray*, 342 B.R.  
25 668, 670 (Bankr. D.C. 2006) (“Congress gave no indication in enacting § 362(d)(4) that  
26 it intended to prevent bankruptcy courts from employing 11 U.S.C. § 105(a) . . . to enter  
27 orders, when necessary or appropriate, to prevent the harm arising from abusive filings.  
28

1 If anything, the 2005 amendments evidence a congressional intent that the courts crack  
2 down on abusive filings by debtors”).<sup>2</sup>

3 Second, a number of more recent decisions also support the foregoing analysis.  
4 See, e.g., *In re Rodriguez*, 516 B.R. 177, 179 n.2 (1st Cir. BAP 2014) (citing *In re*  
5 *Gonzalez-Ruiz*, 341 B.R. 371 (1st Cir. BAP 2006) (“[Section] 105(a) of the Bankruptcy  
6 Code authorizes a bankruptcy court to grant *in rem* relief in connection with granting  
7 relief from the stay under § 362(d) . . . .”); *In re Robles*, 2014 WL 3715092, at \*1, 2014  
8 Bankr. LEXIS 3193, at \*2 (Bankr. N.D. Cal. July 24, 2014) (“[T]he Court retains the  
9 power to grant *in rem* relief pursuant to § 105(a)”; *In re Traub*, 2014 WL 1779261, at \*4,  
10 2014 Bankr. LEXIS 2028, at \*11 (Bankr. S.D. Ga. May 5, 2014) (“Congress did not limit  
11 *in rem* relief to § 362(d)(4)”; *In re Taipin*, 2013 WL 3936377, at \*2, 2013 Bankr. LEXIS  
12 3047, at \*5 (Bankr. D. Hawaii July 30, 2013) (“The court has the authority to grant *in*  
13 *rem* relief [under § 105] . . . .”).

14 Third, although relief that continues to be effective despite a future bankruptcy  
15 case must be, by definition, without notice to whatever future creditors might exist in that  
16 case, it is well established that such lack of prior notice is not an absolute bar to  
17 granting relief. Under Section 102(1), the phrase “after notice and a hearing” or similar  
18

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19  
20 <sup>2</sup> This court is aware that Section 105(a) is not a roving commission to do equity, and must be  
21 used to implement the statute, not expand it. The undersigned Bankruptcy Judge respectfully  
22 disagrees, however, with decisions that appear to narrow Section 105(a) almost if not entirely  
23 out of existence, if by doing so they would deprive the Bankruptcy Courts of the power to  
24 prevent the type of hijacking abuse described in this Opinion. See generally *In re Johnson*, 346  
B.R. 190, 195-96 (9th Cir. BAP 2006) (relief in future cases not available under Section 105(a)).  
*Compare In re Fernandez*, 212 B.R. 361, 372 (Bankr. C.D. Cal. 1997), *aff’d on other grounds*,  
227 B.R. 174 (9th Cir. BAP 1998); and see also, e.g., *In re Henderson*, 395 B.R. 893, 901-02  
(Bankr. D. S.C. 2008) (relief in future cases not limited to § 362(d)(4)).

25 This court is also aware that some authorities construe a request for relief that will last  
26 despite future bankruptcy cases as a request for injunctive, declaratory, or other equitable relief  
27 that requires an adversary proceeding under Rules 7001(2) and (7). See generally *In re Van*  
*Ness*, 399 B.R. 897, 904 (Bankr. E.D. Cal. 2009). But it is not apparent to the undersigned  
28 Bankruptcy Judge why granting relief from the automatic stay should be construed as injunctive  
relief, nor why more elaborate procedures should be required under Section 362(d)(1) than  
would be required to grant the same type of relief under Section 362(d)(4). Alternatively,  
supposing for the sake of discussion that an adversary proceeding were required, that issue has  
been waived and forfeited. See, e.g., *In re Cox*, 68 B.R. 788, 803 (Bankr. D. Or. 1987).

1 phrase means “after such notice as is appropriate in the particular circumstances, and  
2 such opportunity for a hearing as is appropriate in the particular circumstances,” and  
3 authorizes the Bankruptcy Courts to act without a hearing if “there is insufficient time for  
4 a hearing to be commenced ....” When faced with the type of abuse represented by  
5 hijacking, there is never sufficient time for a hearing because every time relief is granted  
6 the hijacker simply chooses another case to hijack. It is exactly to prevent any such  
7 abuse that Section 102(1) authorizes *ex parte* relief, as the drafters of Rule 4001(a)(2)  
8 recognized when they authorized *ex parte* relief from the automatic stay.

9 For all of the foregoing reasons, Section 362(d)(4) is not the only basis to grant  
10 relief from the automatic stay that will continue to be effective despite the filing of future  
11 bankruptcy cases. The broad authorization in Section 362(d)(1) to grant any type of  
12 relief from the automatic stay is sufficient. Alternatively, and in addition, the authority  
13 granted by Section 105(a) and the Bankruptcy Courts’ inherent powers to determine the  
14 scope of their own (automatic) order imposing the stay are sufficient grounds to grant  
15 such relief.

16 None of the foregoing means that it would be appropriate to deprive Borrowers of  
17 any recourse at all. As set forth in this court’s order granting the R/S Motion, they can  
18 seek relief either due to changed circumstances or for any other good cause shown. All  
19 that this court is ruling is that the burden is on them to show why this court’s order  
20 granting the R/S Motion should not continue to apply.

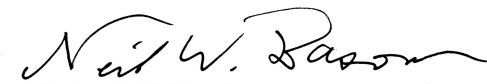
21 //

1 **3. CONCLUSION**

2 For the reasons set forth above, this court has issued its order granting Creditor's  
3 R/S Motion, including relief that will continue to be effective notwithstanding any future  
4 bankruptcy cases. That relief is subject to the limitations set forth in that order,  
5 including the ability to seek relief from that order in any future bankruptcy case due to  
6 changed circumstances or other good cause shown.

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24 Date: December 29, 2017



Neil W. Bason  
United States Bankruptcy Judge